TOPICAL INDEX

PAGE

The coercion of opinion is a mistake because it impairs the integrity and dignity of human personalities and is socially harmful and because it is contrary to our traditions of civil and religious liberty..... 3

Conclusion 8

TABLE OF AUTHORITIES CITED

CASES	PAGE
Cantwell v. Connecticut, 310 U. S. 296	7
Reynolds v. United States, 18 U. S. 145	6

MISCELLANEOUS

Clinchy, Everett Ross, The Right to the Different, in Religion and Our Racial Tensions (1945), p. 29	7
Hirst, Francis W., Life and Letters of Thomas Jefferson (London), p. 136	5
Hirst, Francis W., Life and Letters of Thomas Jefferson (London), p. 138	6
Liberty Documents, p. 11 (published by National Conference of Jews and Christians, 1936)	4
Liberty Documents, p. 17 (published by National Conference of Jews and Christions, 1936)	4
Mill, John Stewart, On Liberty (London Ed., 1887), p. 7	4
Northcott, Religious Liberty (N. Y., 1949), p. 14	3

STATUTES

United States Constitution, First Amendment	6
Virginia Statute for Religious Freedom (enacted Jan. 16, 1786)	5

IN THE

Supreme Court of the United States

October Term, 1949.
Nos. 248 and 249.

No. 248

JOHN HOWARD LAWSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 249

DALTON TRUMBO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Motion for Leave to File Brief Amici Curiae by 64 Ministers and Rabbis in Support of Petition for Rehearing.

The undersigned *amici* are ministers and rabbis who reside in Southern California. We are Christians and Jews, Negro and White, serving the spiritual interests of men and women in our communities and profoundly concerned with the preservation of their general liberties in practice as well as in theory. We are particularly our brother's keeper in the matter of freedom of individual

conscience, and any threat to it is a threat to all who believe, whatever their belief is.

Consent to the filing of this brief has been given by the attorney for the petitioners. Permission has been requested, but no reply has been received from the Solicitor General.

We have learned through the travail of centuries that the price of any liberty is always vigilance—a lesson to be well heeded in the modern world. The spiritual faith and strength of America lies not in the rejection of differences, it is a faith which would reconcile differences in unity by persuasion and reason alone. In every area of social life, economic, political, religious or educational, the choice is between the unlimited use of reason and suppression. The only effective recognition of the ultimate origin of life and law is the exaltation of the rights and liberties of men. This at least is the American spiritual heritage, and without it we are impoverished. Oppression in any form and from any source threatens this priceless heritage, and against such threats, we, who are religious men, stand on common ground.

We are concerned with the essential issue now before this Court for decision, and that is, the extent to which belief, opinion and association may be coerced by law. Important as this issue may be to the particular persons herein involved, it is clear that the principles which govern the determination of the question before this Court have universal significance, affecting as they do the mechanisms on which liberty depends. History teaches us—and nowhere is this more true than in the history of religious liberty—that the principles which underlie a free society must be learned anew in each generation. Even in a land where freedom is securely enthroned there may be threats

to new developments in the minds of men, who live in a world that is never static. A decision of this Court, the supreme interpreter of the fundamental law, is always a touchstone of state action and a test by which other liberties may be measured. For these reasons, this brief is submitted in the hope and desire that it may be helpful to the Court in the resolution of a crucial issue of transcendent importance.

The Coercion of Opinion Is a Mistake Because It Impairs the Integrity and Dignity of Human Personalities and Is Socially Harmful and Because It Is Contrary to Our Traditions of Civil and Religious Liberty.

In 1701, William Penn wrote: "I ever understood an impartial liberty of conscience to be the natural right of all men; and that he that had a religion without it, his religion was none of his own. For what is not the religion of a man's choice, is the religion of him that imposes it; so that liberty of conscience is the first step to have a religion." Quoted in Northcott, Cecil *Religious Liberty* (N. Y. 1949), page 14. In 1772, in a Report of the Committee of Correspondence to the Boston Town Meeting, it was stated: "Just and true liberty, equal and impartial liberty, in matters spiritual and temporal is a thing that all men are clearly entitled to by the eternal and immutable laws of God and nature, as well as by the law of nations and all well-grounded municipal laws, which must have their foundation in the former." Quoted in *Liberty Documents* published by National Conference of Jews and Christians, 1936, page 11. In 1789, George Washington wrote to the Religious Society called Quakers: "Government being, among other purposes, instituted to protect

the persons and consciences of men from oppression, it certainly is the duty of rulers not only to abstain from it themselves, but, according to their stations, to prevent it in others." *Liberty Documents, supra,* page 17.

The most important aspect of a free society is freedom of the mind, and those cognate freedoms of speech, press and association, without which belief and conscience are meaningless. "This, then, is the appropriate region of human liberty. It comprises, first, the inward domain of consciousness; demanding liberty of conscience in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral or theological." Mill, John Stuart, *On Liberty* (London Ed. 1887), page 7. Men must be free to recount their experiences, not only for their own good but for the good of the community. The progress of mankind is dependent upon the totality of experience, and that experience must be unfettered in its opportunity of expression. The individual's interpretation of his own experience may be wholly true or wholly false; it may be partly true and partly false. Unless he is free to refine his own thinking with the thoughts of the members of the community, and they with him, there is no assurance that the ultimate truth will be reached. It is a truism that the heresy of yesterday is the orthodoxy of today. The suppression of opinion is therefore, in its ultimate sense an injury to society. It prevents men from seeking the truth, the indispensable condition of freedom as the Scriptures admonish.

When Jefferson wrote in his *Notes on Virginia* (1781) his philosophy of toleration, he expressed the universal sentiments of the day:

> "The legitimate powers of government extend to such acts only as are injurious to others, but it does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg.—Constraint may make him worse by making him a hypocrite, but it will never make him a truer man. It may fix him obstinately in his errors, but will not cure them. Reason and free inquiry are the only effectual agents against error. Give a loose to them, they will support the true religion by bringing every false one to their tribunal, to the test of their investigation. They are the natural enemies of error, and of error only.—Subject opinion to coercion; whom will you make your inquisitors? Fallible men; men governed by bad passions, by private as well as public reasons. And why subject it to coercion? To produce uniformity. But is uniformity of opinion desirable? No more than of face and stature.—What has been the effect of coercion? To make one half of the world fools and the other half hypocrites. To support roguery and error all over the earth.—Reason and persuasion are the only practical instruments. To make way for these, free inquiry must be indulged; and how can we wish others to indulge it while we refuse it ourselves?"
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> Hirst, Francis W., *Life and Letters of Thomas Jefferson,* London, p. 136.

It is important to observe that this philosophy was embodied into law by the enactment of the Virginia Statute for Religious Freedom on January 16, 1786, a statute

which was, as this Court has noted (*Reynolds v. United States,* 18 U. S. 145), the precursor of the First Amendment to the Constitution. We quote portions of the preamble here because of their relevance and as a striking example of our tradition and heritage:

> "Well aware that the opinions and belief of men depend not on their own will, but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested His supreme will that free it shall remain by making it altogether insusceptible of restraint; that all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do, but to extend its influence on reason alone;—that the opinions of men are not the object of civil government; nor under its jurisdiction; —that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order;—
>
> HIRST, FRANCIS W., *supra,* p. 138.

One more historic document must be mentioned. The Declaration of Independence is more than a charter of liberty. It embodies within it the influence of social, political and economic beliefs distilled from the historic struggles of mankind to free itself from the hand of

tyranny. "From Independence Hall in Philadelphia sounded a Jewish message which became the call of the Republic, 'Proclaim liberty unto all the inhabitants of the land.' *All* people are created equal, the American revolutionaries said, because all men are endowed by their Creator with the unalienable rights to life, liberty and the pursuit of happiness." Clinchy, Everett Ross, the *Right to the Different,* in Religion and Our Racial Tensions, 1945, page 29. Thus on this Judaeo-Christian base, was laid the foundations of American democracy, the idea of unity in diversity, the tradition of freedom, regardless of race, creed, opinion or belief.

This Court has recognized the importance to America of freedom of opinion and belief in the light of our history and traditions. In 1940, Mr. Justice Roberts, speaking for a unanimous Court in *Cantwell v. Connecticut,* 310 U. S. 296, stated (310):

> "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in Church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

Conclusion.

It is our constant boast that we are a nation of free men. The dignity of human beings, the brotherhood of man, is proclaimed by us as authoritative principles which guide our way of life. Race, creed, origin, religious opinions, political affiliations are irrelevancies in the area of freedom. Nevertheless while these principles are embodied in our Constitution and in our traditions, humility requires us to say that these principles are more often honored in their breach than in their observance. Persecution still exists because of differences in opinion, because of differences in birthplace, because of differences in the color of an individual's skin. It would be idle to deny it. We are engaged in an unceasing struggle to bring to fruition the basic assumptions of our society. That is why we urge upon this Court, most respectfully, a careful delineation in this case of the powers which belong to officialdom and the powers which reside in the people. We recognize the perplexities of the problem created in the conflict between authority and the individual. Nevertheless we are convinced that the solution of that age-old problem lies not in coercion enforced by law, but in persuasion enforced by reason. Therein lies the security of the Republic and our spiritual strength.

Respectfully submitted,

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